

REMARKS/ARGUMENTS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

Claims 1, 13-16, and 18-28 are now pending.

The drawings were objected to under 37 CFR 1.83(a) as allegedly failing to show the configuration recited in claim 24. As required by the Examiner, attached hereto is an additional Figure, labeled Figure 7, which illustrates the first and second balloons in the collapsed disposition recited in claim 24. It is respectfully noted that no new matter has been added by proposed new Figure 7 as no more is illustrated than that which is disclosed in the specification, in particular at page 16, which has now been amended to refer to Figure 7. Reconsideration and withdrawal of the objection to the drawings is requested.

Claim 27 was objected to as allegedly being in improper dependent form. In this regard, the Examiner apparently objected to the process limitation incorporated in claim 27. Claim 27 has been amended to more specifically recite that the inflation/deflation ducts are integral with the catheter to thereby include structural limitations which further limit the structure of claim 13. Accordingly, even though claim 27 includes so-called method limitations, it is respectfully submitted that claim 27 properly includes structural limitations as well and, thus, is in proper dependent form.

Claim 1 was rejected under 35 USC 112, second paragraph, as being indefinite. The phrase noted by the Examiner "the thickness and the catheter wall" could not be located within claim 1. However, the final line of claim 1 has been amended to change "the thickness" to "a thickness" since the term thickness is not previously used in claim 1. It is believed, therefore, that the Examiner's objection to claim 1 has been addressed.

AMENDMENTS TO THE DRAWINGS

Attached is new Figure 7, as required by the Examiner, which illustrates the first and second balloons in the collapsed disposition.

Claim 16 has been amended above to delete the word "and" which was inadvertently included therein.

Claim 19 has been amended to address the Examiner's objection.

Claim 1 was rejected under 35 USC 102(b) as being anticipated by Melinyshyn et al. Applicant respectfully traverses this rejection.

Claim 1 now more specifically recites that the catheter extends longitudinally and that the expandable and contractible elements are successively provided in spaced locations along the length of the catheter. In contrast to the structure recited in claim 1, Melinyshyn relates to a generally T-shaped catheter having two distal ends each of which is provided with a balloon. As is apparent, such a structure is markedly different in configuration and function from the structure recited in claim 1. Furthermore, a notable difference between the two devices is the distance between the balloons. According to an embodiment of the invention now more specifically recited in claim 1, the spacing between the two inflatable/deflatable elements may have a length on the order of between a few centimeters and about 10 centimeters. In contrast, in addition to the distinction noted above, it is submitted that Melinyshyn appears to disclose far more distant balloons. Note in this regard Figures 1 and 3 of Melinyshyn which appear to illustrate substantially spaced balloon carrying ends.

For all the reasons advanced above, reconsideration and withdrawal of the rejection based on Melinyshyn is respectfully requested.

Claims 13-15, 17, 18, 20, 21 and 27 were rejected under 35 USC 102(b) as being anticipated by Bell et al. Applicant respectfully but strongly urges reconsideration of this rejection.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986).

While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., Structural Rubber Prods., 749 F.2d at 716-17.

In an embodiment of the invention now more specifically recited in claim 13, the catheter has a central luminal duct 2 which extends to distal end 4 downstream of the first balloon provided in the immediate vicinity of the distal end 4. The second balloon is located at the distal end of extension 11 such that the opening at the end of the central duct 2 is disposed between the first and second balloons. The Bell patent relates to a rectal balloon catheter having one balloon for limiting the depth of insertion of the catheter into the rectum and the second balloon anchoring the inserted catheter. As such, the rectal balloon catheter of Bell is adapted to provide for drainage while controlling the depth of insertion. In contrast to the structure recited in claim 13, there is no duct provided in Bell in communication with the region between the first and second balloons. Furthermore, there is no teaching in Bell or the remaining art of record that would motivate the skilled artisan to modify Bell to include such a duct as there is no need to access the region between the Bell balloons. Under the circumstances, it is respectfully submitted that the invention of the noted claims is not anticipated by nor obvious from Bell.

Claims 13 and 18 were rejected under 35 USC 102(e) as being anticipated by Jonkman et al. Applicant respectfully traverses this rejection.

Jonkman provides spaced balloons at the distal end of a catheter. However, there is no teaching or suggestion in Jonkman of provided a central lumen as recited in claim 13, that opens distally intermediate the spaced balloons. Therefore, claim 13 is not anticipated by nor obvious from Jonkman either.

Claim 19 was rejected under 35 USC 103(a) as being unpatentable over Bell. claim 19 is submitted to be distinct from Bell for the reasons advanced above. It is further respectfully submitted that it would be unobvious to modify Bell to be configured to have an external diameter as recited in claim 19. In this regard, Bell is designed for a disposition in the rectum. The larger of the two balloons must have a diameter so as to preclude further insertion of the catheter whereas the smaller balloon must have a diameter great enough to provide an anchoring function. There is no indication whatsoever that the relatively minute dimensions recited in applicant's claim 19 would be effective to provide the insertion limit and anchoring functions of Bell's balloons. Therefore, it would be unobvious to modify Bell so as to meet the limitations of applicant's claim 19. Indeed, it is not proper under 35 USC 103 to modify a prior art patent in a manner which would destroy that on which the invention of the prior art patent was based. Ex parte Hartman, 186 USPQ 366,67 (PTO Bd. App. 1974).

Claims 16, 25 and 26 were rejected under 35 USC 103(a) as being unpatentable over Hastings in view of Jonkman. Applicant respectfully traverses this rejection. These claims are submitted to be patentable for the reasons advanced above. Indeed, the region between the Hastings' bulbous or inflated portions is free from any duct opening and, therefore, Hastings in combination with Jonkman still fails to meet the limitations of claim 13. Claim 25 is also specifically limited to a duct having an opening located between inflatable/deflatable elements which is not taught in Hastings or Jonkman.

It is noted that claims 22, 23 and 24 have not been rejected over the prior art in the Examiner's Official Action. It is therefore respectfully submitted that claims 22-24 are in condition for allowance and a notice to that effect is solicited.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited.

Respectfully submitted,

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